

CONTENTS

VOLUME 1

	<i>Page</i>
<i>Preface</i>	xvii
<i>Biographical Notes: A.V. Dicey</i>	xxi
<i>J.H.C. Morris</i>	xxiii
<i>Table of Statutes</i>	xxvii
<i>Table of Cases</i>	lxxi
<i>Table of Statutory Instruments</i>	cccxi
<i>Table of Civil Procedure Rules</i>	cccxxxi
<i>Table of European and International Conventions and Legislation</i>	cccxxxv
<i>Table of EC and EU Regulations</i>	cccliii
<i>Table of Foreign Case References</i>	ccclxxxv
<i>Table of Books Referred to</i>	ccclxxxix

PART ONE PRELIMINARY MATTERS

Chapter 1	
NATURE AND SCOPE OF THE CONFLICT OF LAWS	3
Chapter 2	
CHARACTERISATION AND THE INCIDENTAL QUESTION	38
1. Characterisation	38
2. The incidental or preliminary question	55
Chapter 3	
THE TIME FACTOR	63
Chapter 4	
RENOI	77
Chapter 5	
THE EXCLUSION OF FOREIGN LAW	99
Chapter 6	
DOMICILE AND RESIDENCE	131
1. General principles	131
2. Ascertainment of domicile	140
A. Domicile of origin	140
B. Domicile of choice	142
(1) Acquisition	142
(2) Loss	161

Contents

C. Domicile of dependency	163
3. Residence	175
4. Domicile, residence and nationality	197

PART TWO PROCEDURE

Chapter 7	
SUBSTANCE AND PROCEDURE	203
Chapter 8	
INTERNATIONAL LITIGATION: PROTECTIVE MEASURES AND JUDICIAL ASSISTANCE	257
1. Freezing injunctions	257
2. Service of process	278
3. Obtaining evidence abroad	288
4. Security for costs	309
Chapter 9	
PROOF OF FOREIGN LAW	318

PART THREE JURISDICTION AND FOREIGN JUDGMENTS

Chapter 10	
JURISDICTIONAL IMMUNITIES	337
Chapter 11	
JURISDICTION IN CLAIMS IN PERSONAM	371
1. General principle	371
2. Domicile	402
3. Rules relating to jurisdiction	411
A. Where the Brussels I Regulation and the Lugano Convention do not apply or where the defendant is not domiciled in the United Kingdom or any part thereof or in any other State which is a Member State or a Convention State	411
B. Where the defendant is domiciled in a Member State, in a Convention State, or in Scotland or Northern Ireland	464
Chapter 12	
FORUM NON CONVENIENS, LIS ALIBI PENDENS, ANTI-SUIT INJUNCTIONS AND JURISDICTION AGREEMENTS	533

Contents

1. Forum non conveniens, anti-suit injunctions and lis alibi pendens	533
2. Jurisdiction agreements	599
 Chapter 13	
JURISDICTION IN ADMIRALTY CLAIMS IN REM	645
 Chapter 14	
FOREIGN JUDGMENTS	663
1. Introductory	664
2. Enforcement and recognition at common law	673
A. Enforcement and recognition	673
B. Jurisdiction of foreign courts at common law	689
(1) Jurisdiction in personam	689
(2) Where jurisdiction does not exist	712
(3) Judgments in rem	715
C. Conclusiveness of foreign judgments: defences	720
3. Enforcement and recognition under statute	745
(1) Administration of Justice Act 1920	745
(2) Foreign Judgments (Reciprocal Enforcement) Act 1933	749
(3) The Brussels I Regulation, the Lugano Convention and Council Regulation (EC) 805/2004	757
(4) Parts II and IV of the Civil Jurisdiction and Judgments Act 1982	789
(5) Community judgments	791
(6) Judgments against the United Kingdom	793
4. Protection of Trading Interests Act 1980	794
 Chapter 15	
JURISDICTION AND ENFORCEMENT OF JUDGMENTS UNDER MULTILATERAL CONVENTIONS	797
 Chapter 16	
ARBITRATION AND FOREIGN AWARDS	829
1. Governing law	829
2. Staying of proceedings and injunctions to restrain foreign proceedings	856
3. Enforcement of foreign awards	873
A. At common law	874
B. New York Convention awards	885
C. Intra-United Kingdom enforcement	900
D. Enforcement as foreign judgment	901
E. Arbitration and investment disputes	905

VOLUME TWO

**PART FOUR
FAMILY LAW**

Chapter 17	
MARRIAGE	917
1. Formal validity	917
2. Capacity	939
3. Consent of parties	959
4. Polygamous marriages	964
5. Civil partnerships	986
Chapter 18	
MATRIMONIAL CAUSES	994
1. Divorce, nullity and judicial separation	994
A. Jurisdiction of the English courts	994
B. Choice of law	1008
C. Recognition of foreign decrees	1015
(1) Decrees granted in the British Isles	1015
(2) Decrees obtained in other Regulation States	1018
(3) Decrees obtained elsewhere	1019
(4) Non-proceedings divorces and annulments	1032
D. Effect in England of foreign decrees	1050
2. Presumption of death and dissolution of marriage	1057
3. Declarations as to status	1059
4. Financial relief	1062
A. Jurisdiction of the English courts	1062
B. Effect of foreign divorce on English maintenance orders	1092
C. Enforcement of foreign maintenance orders	1094
5. Staying of matrimonial and civil partnership proceedings	1104
Chapter 19	
CHILDREN	1114
1. Parental responsibility in general	1114
2. Guardianship and custody	1117
A. Jurisdiction of the English courts	1117
B. Effect of foreign guardianship and custody orders	1145
3. Maintenance and contribution orders	1194
Chapter 20	
LEGITIMACY, LEGITIMATION AND ADOPTION	1203
1. Legitimacy	1203
A. Jurisdiction of the English courts	1203
B. Recognition of the status of legitimacy	1207
C. Succession by and to legitimate persons	1217

Contents

2. Legitimation	1221
A. Jurisdiction of the English courts	1221
B. Recognition of foreign legitimations	1224
(1) At common law	1224
(2) Under the Legitimacy Act 1976	1233
C. Succession by and to legitimated persons	1236
3. Adoption	1240
A. Jurisdiction of the English courts	1240
B. Recognition of foreign adoptions	1249
C. Succession by and to adopted persons	1259
 Chapter 21	
MENTAL INCAPACITY	1262
1. Jurisdiction	1262
2. Choice of law	1266
3. Recognition and enforcement	1269
4. Removal from the jurisdiction	1273
PART FIVE	
LAW OF PROPERTY	
 Chapter 22	
NATURE AND SITUS OF PROPERTY	1279
 Chapter 23	
IMMOVABLES	1304
1. Jurisdiction of the English court: land in England	1304
2. Jurisdiction of the English court: foreign land	1313
3. Choice of law	1330
 Chapter 24	
PARTICULAR TRANSFERS OF MOVABLES	1336
1. Transfer of tangible things	1336
2. Assignment of intangible things	1354
3. Garnishment	1372
 Chapter 25	
GOVERNMENTAL ACTS AFFECTING PROPERTY	1380
 Chapter 26	
ADMINISTRATION OF ESTATES	1393
1. English grants of representation	1393
2. Effect of an English grant	1401
3. Law governing administration	1404
4. Foreign personal representatives	1406

Contents

Chapter 27	
SUCCESSION	1411
1. Jurisdiction of the English court	1411
2. Jurisdiction of foreign courts	1412
3. Choice of law	1414
A. Intestate succession	1414
B. Testamentary succession	1418
(1) Capacity	1418
(2) Formal validity	1421
(3) Material or essential validity	1426
(4) Interpretation	1432
(5) Election	1438
(6) Revocation	1442
C. Exercise of power by will	1447
(1) Capacity	1447
(2) Formal validity	1449
(3) Interpretation	1450
(4) Material or essential validity	1453
(5) Revocation	1457
4. The proposed EU Regulation on succession	1459

Chapter 28
THE EFFECT OF MARRIAGE ON PROPERTY 1461

Chapter 29	
TRUSTS	1485
1. Ambit of the Recognition of Trusts Act 1987 and governing law	1485
2. Scope of application of governing law	1505
3. Recognition of trusts	1509
4. Particular issues	1512
5. Jurisdiction and the enforcement of the rights of beneficiaries	1515
6. Constructive and resulting trusts	1519

PART SIX

CORPORATIONS AND INSOLVENCY

Chapter 30	
CORPORATIONS AND CORPORATE INSOLVENCY	1527
1. Domicile and residence	1528
2. Status	1532
3. Capacity and internal management	1538
4. Winding up proceedings not falling within Council Regulation (EC) 1346/2000 on Insolvency Proceedings	1548

Contents

A. Jurisdiction of the English courts	1548
B. Effect of an English winding up order	1569
C. Effect of a foreign winding up order	1581
D. Receivers	1595
5. Council Regulation (EC) 1346/2000 on Insolvency Proceedings	1605
A. Introduction and scope	1605
B. International jurisdiction	1615
C. Choice of law	1645
D. Recognition of insolvency proceedings	1675
E. Co-operation and co-ordination	1690
6. UNCITRAL Model Law on Cross-Border Insolvency	1696
A. Introduction and principles	1696
B. Access of foreign representatives or creditors to courts in Great Britain	1705
C. Recognition of a foreign proceeding and relief	1710
D. Co-operation with foreign courts and foreign representatives	1721
E. Concurrent proceedings	1723
F. British insolvency officeholder acting in foreign State	1727
 Chapter 31	
BANKRUPTCY	1729
1. English bankruptcies not falling within Council Regulation (EC) 1346/2000 on Insolvency Proceedings	1729
A. Jurisdiction of the English courts	1729
B. Effect of an English bankruptcy as an assignment of property	1739
C. Choice of law	1746
D. Effect of English bankruptcy as a discharge of debts	1749
2. Foreign bankruptcies not falling within Council Regulation (EC) 1346/2000 on Insolvency Proceedings	1750
A. Jurisdiction of foreign courts	1750
B. Effect in England of foreign bankruptcy as an assignment of property	1752
(1) Bankruptcy in Scotland or Northern Ireland	1752
(2) Bankruptcy in any other foreign country	1754
(3) Successive bankruptcies in different countries	1758
C. Effect in England of foreign bankruptcy as a discharge of debts	1759
3. Bankruptcies falling within Council Regulation (EC) 1346/2000 on Insolvency Proceedings	1763
A. Introduction and scope	1763
B. International jurisdiction	1763
C. Choice of law	1769
D. Recognition of insolvency proceedings	1770
E. Co-operation and co-ordination	1770

PART SEVEN
LAW OF OBLIGATIONS

Chapter 32	
CONTRACTS. GENERAL RULES	1775
1. The law governing a contract	1775
2. Determination of the applicable law	1797
3. Mandatory provisions	1827
4. Material validity	1841
5. Formal validity	1848
6. Scope of the applicable law	1853
7. Capacity	1865
8. Public policy	1871
 Chapter 33	
PARTICULAR CONTRACTS	1879
1. Contracts for the sale, hire and pledge of movables	1879
2. Contracts with regard to immovables	1900
3. Franchise and distribution contracts	1913
4. Contracts for the carriage of persons	1917
5. Contracts for the carriage of goods	1928
6. Consumer contracts	1948
7. Contracts of insurance	1978
8. Contracts of reinsurance	2010
9. Contracts of employment	2022
10. Banking contracts	2057
11. Bills of exchange and promissory notes	2074
12. Negotiable and financial instruments	2097
13. Wagering contracts	2105
14. Agency	2109
A. Relation of principal and agent	2109
B. Relation of principal and third party	2122
C. Relation of agent and third party	2135
 Chapter 34	
NON-CONTRACTUAL OBLIGATIONS: COMMON ISSUES	2139
1. Introduction	2139
2. The Rome II Regulation—background, scope and general matters	2140
A. Introduction	2140
B. Material scope of the Rome II Regulation	2150
C. General matters	2167
3. Freedom of choice under the Rome II Regulation	2170
4. Scope of the law applicable under the Rome II Regulation and common rules	2174
5. Public policy and overriding mandatory provisions	2186
6. Equitable obligations	2188

Contents

Chapter 35	
TORT/DELICT	2195
1. The law applicable to tort/delict prior to the Rome II Regulation	2195
2. The law applicable to tort/delict under the Rome II Regulation	2207
A. The general rule	2207
B. Product liability	2220
C. Unfair competition and acts restraining free competition	2228
D. Environmental damage	2236
E. Infringement of intellectual property rights	2240
F. Industrial action	2244
G. <i>Culpa in contrahendo</i>	2247
3. Law applicable to defamation and other torts to which the Rome II Regulation does not apply	2252
4. Effect of the Electronic Commerce (EC Directive) Regulations 2002	2282
Chapter 36	
UNJUST ENRICHMENT, EQUITABLE CLAIMS AND <i>NEGOTIORUM GESTIO</i>	2289
1. Choice of law rules for obligations arising out of unjust enrichment	2289
2. Obligations arising out of unjust enrichment: particular issues	2306
3. Equitable claims and doctrines	2308
4. Issues common to torts and obligations arising out of unjust enrichment	2324
5. <i>Negotiorum gestio</i>	2328
Chapter 37	
FOREIGN CURRENCY OBLIGATIONS	2335
1. The money of account	2335
2. Effect of law of the transaction upon monetary transactions	2355
3. Discharge of currency obligations	2361
4. Judgments in foreign currency	2376
<i>Index</i>	I